

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

RICHARD RODRIGUEZ,  
Plaintiff,

v.

PEPSI BEVERAGE COMPANY  
d/b/a PEPSICO, INC.  
Defendant

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Civil Action No. 16-CV-602

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that PEPSICO, INC., Defendant, referred to in error by Plaintiff as Pepsi Beverage Company d/b/a PepsiCo, Inc.,<sup>1</sup> removes this action from the 92nd Judicial District Court for Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division. In support of this removal, Defendant shows the following:

1. Defendant in this action is PepsiCo, Inc., which is a corporation organized under the laws of North Carolina and has its corporate headquarters and principal place of business at Purchase, New York.

2. This is a civil action originally styled No. C-4401-16-A and filed in the 92nd Judicial District Court for Hidalgo County, Texas, a court encompassed by the McAllen Division of the Southern District of Texas.

3. In compliance with 28 U.S.C. §1446(a), copies of all process, pleadings, and orders served upon Defendant in the state-court action are attached, together with an index of state court pleadings and a list of all counsel of record.

4. This Notice of Removal is filed within thirty (30) days of receipt by Defendant of the Complaint, which was filed in State District Court on September 21, 2016 and wherein Plaintiff named Defendant, a diverse party. Removal is therefore timely under 28 U.S.C. §1446(b).

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<sup>1</sup> As shown by the Affidavit of Bill J. Howard, attached to this Notice as Exhibit "A," Pepsi Beverages Company is an assumed name of Bottling Group, LLC, which is a wholly-owned subsidiary of PepsiCo, Inc. Accordingly, PepsiCo, Inc. is not an assumed name for Pepsi Beverage Company, as alleged by Plaintiff.

5. Defendant represents that it shall give written notice of this removal to Plaintiff, through his counsel, and shall file notice of the Notice of Removal with the Clerk of the County Court for Hidalgo County, Texas, consistent with the provisions of 28 U.S.C. §1446(d).

6. There is diversity of citizenship among the Plaintiff and Defendant and complete diversity existed between Plaintiff and Defendant at the time the action was commenced. Plaintiff, by his pleadings, judicially admits that he is a resident and citizen of the State of Texas. Defendant, in contrast, was at the time of the filing of the Complaint and at all other times pertinent hereto a business corporation incorporated under the laws of the State of North Carolina, with its principal place of business located at Purchase, New York, and therefore is not a citizen of Texas for diversity and removal purposes pursuant to the provisions of 28 U.S.C. §1332(c)(1).

7. In his state court pleadings, Plaintiff failed to comply with the pleadings requirements of Texas Rule of Civil Procedure 47(c), regarding Claims for Relief. Nonetheless, the matter in controversy very clearly exceeds the minimum jurisdictional amount of \$75,000 for removal to federal court on the basis of diversity. Plaintiff, in particular, seeks to recover by his lawsuit for emotional pain and suffering, mental anguish, and loss of enjoyment of life; and further for loss of back wages and benefits in the past, going all the way back to 2014, as well as loss of wages and benefits to be sustained for an indefinite period into the future; and also to recover punitive damages. *See Lockett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) (Trial court found as "facially apparent" that the amount in controversy exceeded \$75,000, based upon the Plaintiff's claimed types of damages as contained in the state court pleading.) Moreover, Plaintiff seeks to recover statutory attorney fees, "pursuant to the Texas Labor Code." Where a plaintiff seeks to recover attorney fees pursuant to statute, the amount of the fees are included in calculating the amount in controversy for purposes of diversity jurisdiction. *See Missouri State Life Ins. Co. v. Jones*, 290 U.S. 199 (1933); *Cupples Co. Mfrs. v. Merchants State Bank*, 390 F.2d 184 (5th Cir. 1968). Plaintiff's effort to recover statutory attorney fees further makes "facially apparent" that Plaintiff's pleadings, read as whole, seek to recover in

excess of \$75,000.

8. This is a civil action over which the district courts of the United States have original jurisdiction, on the basis of diversity of citizenship, and may therefore be removed to this Court, pursuant to 28 U.S.C. §§1332 and 1441.

WHEREFORE, Defendant prays that this action be removed to this Court and that this Court accept jurisdiction and henceforth place this action on the Court's docket for further proceedings.

Respectfully submitted,

/s/ Raymond A. Cowley  
**Raymond A. Cowley**  
State Bar No. 04932400  
rcowley@dykema.com  
1400 North McColl Road, Ste. 204  
McAllen, Texas 78501  
Telephone: (956) 984-7400  
Facsimile: (956) 984-7499

**COUNSEL FOR DEFENDANT**

OF COUNSEL:

**DYKEMA COX SMITH**

**CERTIFICATE OF SERVICE**

I certify that on the 18th day of October, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, and served it on the following counsel of record via CM/ECF (if applicable) and/or regular mail and/or certified mail, return receipt requested:

Dennis L. Richard  
Kennard Richard, PC  
100 N.E. Loop 410, Ste. 610  
San Antonio, Texas 78216  
Dennis.richard@kennardlaw.com

/s/ Raymond A. Cowley  
Raymond A. Cowley

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

RICHARD RODRIGUEZ,  
Plaintiff,

v.

PEPSI BEVERAGE COMPANY  
d/b/a PEPSICO, INC.  
Defendant

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Civil Action No. 16-CV-602

**AFFIDAVIT OF BILL J. HOWARD**

STATE OF TEXAS §  
§  
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared BILL J. HOWARD who, being known to me, on his oath deposed and said as follows:

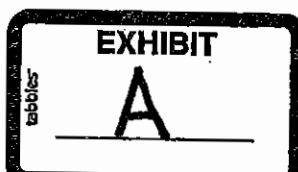
"My name is Bill J. Howard. I am the Manager of the PepsiCo, Inc. Legal Department in Plano, Texas. I am over 21 years of age and have never been convicted of a felony or of a crime involving moral turpitude. I therefore am competent to provide this affidavit, and the facts stated herein are made on personal knowledge and are true and correct.

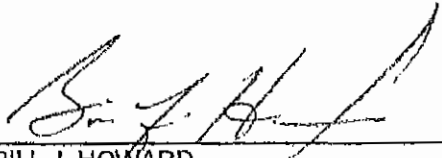
"PepsiCo, Inc. is a corporation organized under the laws of North Carolina and has its corporate headquarters and principal place of business in Purchase, New York. Bottling Group, L.L.C. is a Delaware limited liability company with its principal place of business in White Plains, New York. Bottling Group, L.L.C. is a wholly-owned subsidiary of PepsiCo, Inc.

"Plaintiff, Richard Rodriguez, was employed by Bottling Group, L.L.C., which does business as Pepsi Beverages Company."

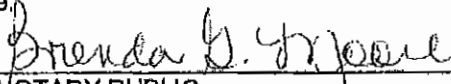
Further affiant sayeth naught.

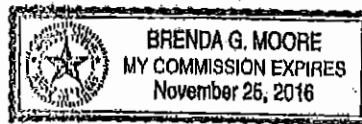
SIGNED this 11 day of October, 2016.



  
BILL J. HOWARD

SWORN TO AND SUBSCRIBED before me on this the 11 day of October, 2016, to  
certify and witness my hand and seal of office.

  
NOTARY PUBLIC



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

RICHARD RODRIGUEZ,  
Plaintiff,

V.

PEPSI BEVERAGE COMPANY  
d/b/a PEPSICO, INC.  
Defendant

Civil Action No. 16-CV-602

## INDEX

1. Civil Cover Sheet
2. Defendant's Notice of Removal
3. Plaintiff's Original Petition, Jury Fee Demand and Citation
4. Civil Docket Sheet - State Court
5. List of Counsel of Record

JS 44 (Rev. 08/16)

## CIVIL COVER SHEET

16-CV-602

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Richard Rodriguez

(b) County of Residence of First Listed Plaintiff Hidalgo County, Tx  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Dennis L. Richard, Kennard Richard, P.C., 100 NE Loop 410, Ste. 610,  
San Antonio, Texas 78216 (210) 314-5688

## DEFENDANTS

PepsiCo, Inc.

County of Residence of First Listed Defendant Westchester County, NY  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Raymond A. Cowley, Dykema Cox Smith, 1400 North McColl, Ste.  
204, McAllen, Texas 78501 (956) 984-7400

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Sec. 1332(a) and (c), 28 U.S.C. Sec. 1446(a)

Brief description of cause:  
Tex. Lab. Code Ann. Secs. 21.051 and 21.055

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

10/18/2016 Raymond A. Cowley

SIGNATURE OF ATTORNEY OF RECORD

Ray Cowley w/permission HLH

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding Judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



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9/21/2016 10:50:14 AM  
Hidalgo County District Clerks  
Reviewed By: Leticia Pecina

CAUSE NO. ~~C~~-4401-16-A

RICHARD RODRIGUEZ,  
*Plaintiff,*

vs.

PEPSI BEVERAGE COMPANY  
d/b/a PEPSICO, INC.  
*Defendant.*

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IN THE DISTRICT COURT

\_\_\_ JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, RICHARD RODRIGUEZ, hereinafter referred to as Plaintiff or Rodriguez, complaining of and about PEPSI BEVERAGE COMPANY, d/b/a PepsiCo, Inc. hereinafter referred to as Defendant or Pepsico, and for cause of action files this his Plaintiff's Original Petition, showing to the Court as follows:

I.  
PARTIES AND SERVICE

1. Plaintiff, Rodriguez, is a citizen of the United States and the State of Texas and worked for Defendant in Hidalgo County, Texas.
2. Defendant, Pepsico, is a for profit corporation headquartered in Plano, Texas. Service may be effected by sending a copy of Plaintiff's Original Petition to Chief Executive Officer, Albert P. Carey, by certified mail, return receipt requested, at 7701 Legacy Drive, Plano TX 75024.
3. This is a Level III case.

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9/21/2016 10:50:14 AM  
Hidalgo County District Clerks  
Reviewed By: Leticia Pecina

C-4401-16-A

II.  
JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and the parties to this case and all conditions precedent to the filing of this suit have been met and venue properly lies Hidalgo County, Texas. Plaintiff has dually filed his charge of discrimination with both the Texas Workforce Commission-Civil Rights Division and the Equal Employment Opportunity Commission. All required administrative remedies have been exhausted and all conditions precedent have been satisfied. Plaintiff further avers that this case and these charges of discrimination and retaliation have been brought in a timely manner. This Court has jurisdiction pursuant to Section 21.054 of the Texas Labor Code.

III.  
JURY DEMAND

5. Plaintiff is requesting trial by jury and will tender the statutory jury fee.

IV.  
AGENCY

6. Whenever in this petition it is alleged that the Defendant did any act or thing, it is meant that Defendant's officers, agents, servants, employees or representatives did such act or thing and that at the time such act or thing was done, it was done with the full authorization or ratification of or by Defendant and was done in the normal and routine course and scope of employment of Defendant's officers, agents, servants, employees or representatives.

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Reviewed By: Leticia Pecina

C-4401-16-A

**V.  
FACTS**

7. This case is founded upon Defendant's violations of Sections 21.051 and 21.055 of the Texas Labor Code. Plaintiff worked for Pepsico from April 2, 1981, until December 22, 2014, when he was wrongfully terminated. At the time of his termination, Rodriguez was 54 years of age and a member of the protected age group. During his 33 plus years with Pepsico, Plaintiff served with distinction as a Sales Representative in Brownsville, San Benito and Harlingen, Texas areas. Rodriguez would visit as many as 17 stores each day and since mid 2012 his supervisor was Hector Martinez.

8. On January 28, 2014, Plaintiff received written counseling for allegedly failing to follow a four-week rotation method regarding out of date product. In truth and in fact, Rodriguez was being set up for failure. Much of the product being delivered to the stores was already facing issues about being out of date when delivered. In mid-September 2014, my supervisor questioned why I did not accept an assignment like the one assumed by an older Pepsico employee, referred to as my "El Compadre". Plaintiff was told that the position would be easier on him. On November 2, 2014, Rodriguez was publically questioned about the orders he was submitting at a "town meeting". Martinez was placing Plaintiff under a microscope and trying to find fault with his performance at every turn. On November 6, 2014, Plaintiff was suspended for 3 days while being investigated for alleged data misrepresentation. Rodriguez performed his job just like the other Sales Representatives who were younger than him. Alex Franco, a Human Resources representative was conducting the

C-4401-16-A

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Hidalgo County District Clerks  
Reviewed By: Leticia Pecina

investigation. Franco appeared to do little in the way of investigation. His primary focus was asking Rodriguez about considering early retirement. On November 17, 2014, Plaintiff was presented with an Employee Transition Agreement and Release and told "not to worry about the investigation". Plaintiff was told he had 21 days to consider the document and then the next day he was advised that if he did not sign the Employee Transition Agreement and Release he would be fired. The agreement required Plaintiff to forfeit any claim that he might have for age discrimination and retaliation for opposing age discrimination so Rodriguez refused to sign. Franco reversed his position about the number of days that Plaintiff had to review the document. Plaintiff advised Franco that he needed to get legal advice. When Plaintiff failed to sign the Agreement and Release, he was terminated on December 22, 2014. The conduct of Pepsico was a devastating blow to Plaintiffs Christmas in 2014.

## VI. DAMAGES

9. By reason of Defendant's acts and conduct, as herein alleged, Plaintiff has been damaged as follows:

- a.) Compensatory damages (including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-economic damages) allowed under the Texas Labor Code.
- b.) Economic damages in the form of lost back pay and lost fringe benefits in the past. Economic damages, in the form of lost wages and fringe benefits that will, in reasonable probability, be sustained in the future.
- c.) Attorney's fees pursuant to the Texas Labor Code.
- d.) Punitive damages for the intentional age discrimination and reckless indifference to the state protected rights of Richard Rodriguez

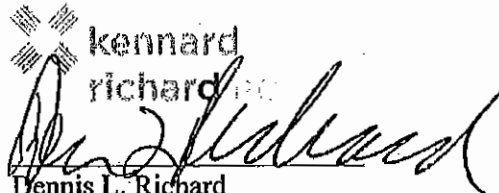
C-4401-16-A

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Hidalgo County District Clerks  
Reviewed By: Leticia Pecina

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial of this cause, Plaintiff has and recovers of and from the Defendant actual damages and punitive damages in a sum within the jurisdictional limits of this Court, pre-and post-judgment interest as allowed by law, attorney's fees, costs of Court, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

  
Dennis L. Richard

Texas Bar No. 16842600  
100 N.E. Loop 410, Suite 610  
San Antonio, Texas 78216  
Main: (210) 314-5688  
Fax: (210) 314-5687  
Dennis.richard@kennardlaw.com

Electronically Filed  
9/21/2016 4:31:39 PM  
Hidalgo County District Clerks  
Reviewed By: Andria Garcia



September 21, 2016

LANELL HOWARD  
CASE MANAGER  
LANELL.HOWARD@KENNARDLAW.COM

Via E-File

Laura Hinojosa, Hidalgo County District Clerk  
100 N. Clossner  
P.O. Box 87  
Edinburg, TX 78539

Re: Cause No. C-4401-16-A; Richard Rodriguez v. Pepsi Beverage Company d/b/a  
Pepsico, Inc.; In the 92<sup>nd</sup> Judicial District Court, Hidalgo County

Dear Madame:

In filing the Original Petition in this matter, I inadvertently omitted the Jury Fee. This will serve as a request to add the Jury Fee in the amount of \$40.00 in the above referenced matter.

Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

 kennard  
richard P.C.

/s/ Lanell Howard  
Lanell Howard

/lh



HOUSTON / AUSTIN / SAN ANTONIO / EL PASO / RIO GRANDE VALLEY / WASHINGTON D.C.

2605 Gumpsta Drive, 14th Floor, Houston, Texas 77057 P 713.742.0900 F 713.742.0901 T 713.742.0901

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8/27/2016 10:41:49 AM

Hidalgo County District Clerk

Reviewed By: Monica Valdez

LAURA HINOJOSA

Greetings:

Attached you will find the service requested.

May this serve to inform you that service has been issued. Please proceed in attaching any file stamped documents that need to be served as stated on your issued service.

Please note, the link you are about to open is a "live link" notification. Please ensure you are printing the service which includes our clerk's signature and the State Seal. If you are opening a document without the official certifications (signature and seal) please close the window until the document is processed accordingly. This may take a few minutes.

\*When serving protective orders, please DO NOT serve the TCIC form to respondent.

We appreciate the opportunity to assist you. Please contact our office if you have any questions or require additional information.

Sincerely,



Laura Hinojosa  
Hidalgo County District Clerk



**C-4401-16-A**  
**92ND DISTRICT COURT, HIDALGO COUNTY, TEXAS**

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**CITATION**

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**THE STATE TEXAS**

**NOTICE TO DEFENDANT:** You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you.

**PEPSI BEVERAGE COMPANY d/b/a PEPSICO, INC.**  
**BY SERVING CHIEF EXECUTIVE OFFICE, ALBERT P. CAREY**  
**7701 LEGACY DRIVE**  
**PLANO TX 75024**

You are hereby commanded to appear by filing a written answer to the **PLAINTIFF'S ORIGINAL PETITION** at or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the Honorable 92nd District Court of Hidalgo County, Texas at the Courthouse, 100 North Closner, Edinburg, Texas 78539.

Said Petition was filed on this the 21st day of September, 2016 and a copy of same accompanies this citation. The file number and style of said suit being, **C-4401-16-A, RICHARD RODRIGUEZ VS. PEPSI BEVERAGE COMPANY D/B/A PEPSICO, INC.**

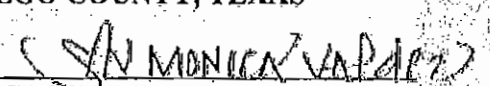
Said Petition was filed in said court by Attorney Dennis L. Richard, 85 N.E. Loop 410, Suite 603, San Antonio, Texas 78216.

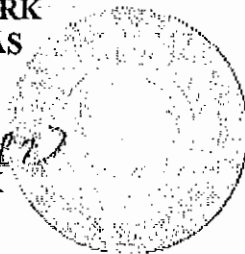
The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

**ISSUED AND GIVEN UNDER MY HAND AND SEAL** of said Court at Edinburg, Texas on this the 27th day of September, 2016.

**LAURA HINOJOSA, DISTRICT CLERK**  
**100 N. CLOSNER, EDINBURG, TEXAS**  
**HIDALGO COUNTY, TEXAS**

  
**MONICA VALDEZ DEPUTY CLERK**





CERTIFIED MAIL 9214 8901 0661 5400 0093 0331 72

**CERTIFICATE OF RETURN  
UNDER RULES 103 T.R.C.P.**

This is to certify that on this the 27th day of September, 2016 I, Monica Valdez, Deputy Clerk of the 92nd District Court of Hidalgo County, Texas mailed to the defendant in Cause Number C-4401-16-A, RICHARD RODRIGUEZ VS. PEPSI BEVERAGE COMPANY d/b/a PEPSICO, INC, a copy of the citation along with a copy of the petition by certified mail return receipt requested. Return receipt was returned on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ (or unserved for the reason on the certificate return)

**GIVEN UNDER MY HAND AND SEAL OF SAID COURT**, at office in Edinburg, Texas on this the 27th day of September, 2016.

**LAURA HINOJOSA, DISTRICT CLERK  
HIDALGO COUNTY, TEXAS**

**MONICA VALDEZ, DEPUTY CLERK**

**COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,  
CONSTABLE OR CLERK OF THE COURT**

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_ and the address is \_\_\_\_\_, and I declare under penalty of perjury that the foregoing is true and correct.

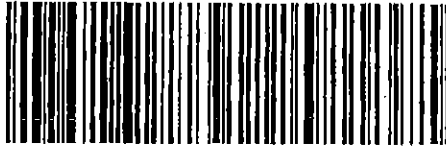
**EXECUTED** in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**Declarant"**

\_\_\_\_\_  
**If Certified by the Supreme Court of Texas  
Date of Expiration / SCH Number**



LAURA HINOJOSA  
HIDALGO COUNTY DISTRICT CLERKS  
PO BOX 87  
EDINBURG, TX 78540-0087



9214 8901 0661 5400 0093 0331 72

RETURN RECEIPT (ELECTRONIC)

C-4401-16-A

PEPSI BEVERAGE COMPANY D/B/A PEPSICO  
CHIEF EXECUTIVE OFFICE, ALBERT P. CAREY  
7701 LEGACY DRIVE  
PLANO, TX 75024

RETURN SERVICE  
REQUESTED

CUT / FOLD HERE

8 1/2" ENVELOPE  
CUT / FOLD HERE

CUT / FOLD HERE

## Mail Piece Details



### Recipient Address

PEPSI BEVERAGE COMPANY D/B/A PEPSICO  
CHIEF EXECUTIVE OFFICE, ALBERT P. CAREY  
7701 LEGACY DRIVE  
PLANO, TX 75024

**Record / Case Number:**  
C-4401-16-A

### Return Address

LAURA HINOJOSA  
HIDALGO COUNTY DISTRICT CLERKS  
PO BOX 87  
EDINBURG, TX 78540-0087

### Mail Piece Information

**Tracking Number:** 92148901066154000093033172

**Date Created:** 09/27/2016 11:36:16 AM

**Mail Class:** USPS First Class Mail

**Special Services:** Certified Mail  
Return Receipt Electronic

**Memo:** --

**Created By:** Monica Valdez - Hidalgo County Distric

### Tracking Information

**Mailed:** September 27, 2016, 11:36:16 AM, EDINBURG, TX 78540

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[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)Location : All Courts [Images](#)**REGISTER OF ACTIONS****CASE NO. C-4401-16-A**

RICHARD RODRIGUEZ VS. PEPSI BEVERAGE COMPANY d/b/a PEPSICO, INC.

§  
§  
§  
§  
§

Case Type: All Other Civil Cases (OCA)  
 Date Filed: 09/21/2016  
 Location: 92nd District Court

**PARTY INFORMATION**

		Attorneys
Defendant	PEPSI BEVERAGE COMPANY d/b/a PEPSICO, INC.	
Plaintiff	RODRIGUEZ, RICHARD	Dennis L. Richard Retained 210-314-5688(W)

**EVENTS & ORDERS OF THE COURT**

**OTHER EVENTS AND HEARINGS**

09/21/2016 Original Petition (OCA)  
Petition

09/21/2016 Request  
JURY DEMAND

09/27/2016 Citation By Certified Mail  
 PEPSI BEVERAGE COMPANY d/b/a PEPSICO, INC. Unserved

09/27/2016 Service Issued  
PEPSI BEVERAGE CO.

**FINANCIAL INFORMATION**

	Plaintiff RODRIGUEZ, RICHARD		
	Total Financial Assessment		435.00
	Total Payments and Credits		435.00
	Balance Due as of 10/12/2016		0.00
09/21/2016	Transaction Assessment		393.00
09/21/2016	EFile Payments from TexFile	Receipt # DC-2016-072535 RODRIGUEZ, RICHARD	(393.00)
09/21/2016	Transaction Assessment		42.00
09/21/2016	EFile Payments from TexFile	Receipt # DC-2016-072767 RODRIGUEZ, RICHARD	(42.00)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

RICHARD RODRIGUEZ,  
Plaintiff,

v.

PEPSI BEVERAGE COMPANY  
d/b/a PEPSICO, INC.  
Defendant

§  
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§  
§

Civil Action No. 16-CV-602

LIST OF COUNSEL OF RECORD

Counsel For Plaintiff

Dennis L. Richard (Tx. 16842600)  
Kennard Richard, PC  
100 N.E. Loop 410, Ste. 610  
San Antonio, Texas 78216  
[Dennis.richard@kennardlaw.com](mailto:Dennis.richard@kennardlaw.com)  
Telephone: (210) 314-5688  
Facsimile: (210) 314-5687

Counsel For Defendant

Raymond A. Cowley  
Dykema Cox Smith  
1400 N. McColl Road, Ste. 204  
McAllen, Texas 78501  
[rcowley@dykema.com](mailto:rcowley@dykema.com)  
Telephone: (956) 984-7400  
Facsimile: (956) 984-7401

CAUSE NO. C-4401-16-A

RICHARD RODRIGUEZ,  
Plaintiff

VS.

PEPSI BEVERAGE COMPANY  
d/b/a PEPSICO, INC.  
Defendant

§  
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§

IN THE DISTRICT COURT

92<sup>ND</sup> JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

**NOTICE OF FILING OF REMOVAL TO FEDERAL COURT**

PLEASE TAKE NOTICE that Defendant has filed a Notice of Removal in the United States District Court, Southern District of Texas, McAllen Division. A copy of this Notice, the Notice of Removal and attachments thereto are being filed with the Clerk of the County Court of Hidalgo County, Texas and served on all counsel of record.

Respectfully submitted,

**DYKEMA COX SMITH**  
1400 N. McColl Road, Suite 204  
McAllen, Texas 78501  
Telephone: (956) 984-7400  
Facsimile: (956) 984-7499

**/s/Raymond A. Cowley**

Raymond A. Cowley  
State Bar No.: 04932400  
rcowley@dykema.com

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I certify that on the 18<sup>th</sup> day of October, 2016, I electronically filed the foregoing document with the Clerk of the Court using the eFileTexas system, and served it on the following counsel of record via eFileTexas system (if applicable) and/or regular mail and/or certified mail, return receipt requested:

Dennis L. Richard (Tx. 16842600)  
Kennard Richard, PC  
100 N.E. Loop 410, Ste. 610  
San Antonio, Texas 78216  
Dennis.richard@kennardlaw.com

/s/Raymond A. Cowley  
Raymond A. Cowley